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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act

Competitive Bidding

PP Docket No 93-253

COMMENTS OF THE NYNEX CORPORATION

NYNEX Corporation

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Summary

The competitive bidding authority granted to the Commission by Congress earlier this year gives the Commission an opportunity to create and implement a license allocation process that will ensure that all eligible participants have a full and fair opportunity to compete for mobile service licenses. The auctions should entail easy-to-administer processes that promote economic efficiencies and result in spectrum being awarded to parties who value it most.

The competitive bidding procedures the Commission adopts will significantly influence who participates in auctions, the amounts bid for licenses and, ultimately, the viability and range of services offered to customers. In analyzing the vast and complex issues presented in this proceeding, the Commission must adopt competitive bidding rules that ensure equity and eliminate undue risk.

NYNEX believes that the Commission should employ an electronic auction process that permits participants to bid simultaneously for all spectrum blocks, with bidders permitted to submit combinatorial bids. This approach is more likely than the Commission's tentative proposal to achieve the public policy objectives set forth in Section 309(j) of the Budget Act.

NYNEX supports the availability of financial arrangements, but not set-asides, to designated entities eligible for special treatment. We believe that special financial arrangements can be designed to promote diversity

without impeding the development of equitable auction procedures that allocate spectrum to those who will generate the greatest social benefit.

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COMMENTS OF THE NYNEX CORPORATION

NYNEX Corporation (hereinafter "NYNEX"), by its attorneys, respectfully submits the following comments in response to the Notice of Proposed Rulemaking (hereinafter "Notice") released by the Commission on October 12, 1993, in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY OF POSITION

In its Notice, the Commission seeks comment on the new Section 3(j), added to the Communications Act of 1934 (hereinafter "the Act") by the Omnibus Budget Reconciliation Act of 1993, signed into law on August 10, 1993, (hereinafter "the Budget Act").¹ Section 3(j) gives the Commission express authority to employ competitive bidding procedures to choose among mutually exclusive applications for initial

¹ Pub. L. No. 103-66, Title VI, 6002(b), 107 Stat. 312, 392 (1993).

spectrum licenses. The Budget Act requires the Commission to conduct a rulemaking proceeding to prescribe regulations to implement Section 3(j) within 210 days, or no later than March 8, 1994. In addition, the Commission must use its new competitive bidding processes to issue licenses and permits for Personal Communications Service ("PCS") spectrum by May 7, 1994.

The Notice sets forth the Commission's views regarding its general approach to implementing the Budget Act, the principles it intends to apply in determining whether a license should be subject to auction procedures, and, with respect to the auction process itself, the alternative approaches for bidding, payment, deposits, safeguards, and bidder qualifications and eligibility that should be employed to auction the licenses.

This proceeding marks the Commission's third attempt to develop procedures under which it will issue licenses for certain mobile services. The use of comparative hearings and lotteries proved, from the Commission's and Congress' perspective, to be less than satisfactory. Comparative hearings, while arguably yielding the most qualified applicant, often resulted in protracted hearings which placed a significant drain on scarce Commission resources and caused significant delays in the introduction of cellular service to the public. The use of lotteries too often resulted in the award of licenses to individuals whose only interest was in securing windfall profits from the sale of their licenses.

NYNEX believes that the system of competitive bidding authorized by the Budget Act holds the promise of allocating

spectrum to licensees who would use the spectrum to generate the greatest social benefit. At the same time, it would result in the "recovery for the public of a portion of the value of the public spectrum made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource."² There should be no doubt, however, that adopting processes that will govern the allocation of spectrum is tremendously complex and fraught with risk.³

The choice of auction mechanisms will substantially affect the manner in which the objectives sought to be achieved by Section 309(j)(2)(B) will be realized. In light of the extreme importance of this proceeding on the growth of wireless services in this country, NYNEX is pleased to submit to the Commission for its consideration a paper, attached as Exhibit 1, entitled "A Public Interest Assessment Of Spectrum Auctions For Wireless Communications Services" authored by Professors Robert G. Harris and Michael L. Katz of the University of California at Berkeley.

As Professors Harris and Katz make clear, the Commission's general approach to implementing the Budget Act must be guided by four key goals: (1) spectrum should be

² Notice at ¶12.

³ Although some governmental agencies use auctions to award certain governmental rights, the use of auctions to allocate spectrum is significantly more complex, particularly where, as here, the Commission has proposed multiple band allocations, using both BTAs and MTAs as proposed licensing areas, with parties also permitted to submit combinatorial bids.

allocated to those uses that generate the greatest social benefit; (2) firms should have sufficient incentives to invest in the research and physical plant necessary to provide innovative new services; (3) the spectrum allocation process should encourage diversity; and (4) the spectrum allocation process should be fair.

The specific auction mechanism adopted by the Commission will have a profound effect on whether the desired goals are achieved. To attain these objectives, the Commission should design and implement specific auction procedures that give effect to the following fundamental principles: (1) the auction process should result in those parties who place the highest value on the spectrum being the winning bidders; (2) the auction process should not impose undue risks on participants; (3) the auction process should be designed to promote the flow of information; (4) the auction process should be as transparent and understandable as possible; (5) the auction process should discourage insincere bidding; (6) the auction process should promote ownership by designated entities without introducing undue distortions in the telecommunications marketplace; (7) the auction process should allow parties to aggregate spectrum when doing so creates value; and (8) the auction process should allow parties to form alliances when doing so creates value.

In considering the goals and fundamental principles of auction design discussed by Professors Harris and Katz, NYNEX believes that the auction processes tentatively proposed by the Commission in the Notice will not result in either the

attainment of economic efficiency or the maximization of long-term benefits to be enjoyed by telecommunications users. NYNEX believes that the public interest would best be served by an auction mechanism that provides for the simultaneous auction of all blocks of spectrum through English auctions with combinatorial bids. The specifics of the NYNEX proposal are set forth in Section III. To the extent, however, that the Commission adopts its tentative conclusion to employ sequential English auctions (largest markets auctioned first) coupled with combinatorial sealed bids, modifications to the Commission's proposal must be adopted to avoid unfairness to bidders and distortions to the bidding process. These modifications are discussed in Section IV.

In Section V, we argue that special financial arrangements should be made available to members of designated groups who win auctions for specified blocks of spectrum. In Section VI, we address issues raised by resale of spectrum allocated by auction. We show that, apart from rules designed to ensure against potential abuse of the special financial arrangements for designated entities, no resale restrictions should apply to spectrum licenses awarded by auction. In Section VII, we urge the Commission to clearly enunciate a policy in support of alliances formed by bidders.

The competitive bidding procedures adopted by the Commission will undoubtedly have a significant impact on the extent to which competition develops, the ability of parties to participate in the bidding process and, in turn, the viability and range of services offered to customers. The adoption of

competitive bidding rules will require the Commission to carefully consider a substantial number of new and complex issues.

II. THE COMMISSION'S GENERAL APPROACH TO IMPLEMENTING THE BUDGET ACT REQUIRES SOME MODIFICATION

A. The Commission's Broad Design Criteria Are Too Simplistic

The Notice set forth "certain broad criteria" that the Commission states it will employ in implementing the Budget Act. First, the Commission proposes that the auction mechanism that it adopts must be simple and easy-to-administer. Second, heavy reliance will be placed on the experience of other agencies who have successfully completed auctions. Third, the system it adopts should minimize costs to applicants and the Commission.⁴ Although these criteria are generally valid, the complex public policy issues associated with adopting and implementing an auction mechanism for the licensing of spectrum, that by some estimates will yield over \$10 billion to the United States treasury, require the adoption of broader, and more flexible, criteria than those proposed by the Commission.⁵

⁴ Notice at ¶18.

⁵ The Commission should recognize, for example, that the experiences of other agencies who have implemented auctions, while illustrative, are of limited value. The auction of oil and timber rights, for example, does not, by any measure, match the complexity of the issues raised by the auction procedure contemplated by the Notice. The rules that the Commission adopts in response to this Notice will represent the Commission's best attempt to

The successful implementation of the Budget Act requires the Commission to focus on goals that relate both to economic efficiency and to considerations of diversity and fairness. According to Professors Harris and Katz, the Commission should adopt and implement an auction mechanism that will:

- (1) promote economic efficiency by allocating scarce spectrum to those that will put the spectrum to the most valuable use;
- (2) promote economic efficiency by incenting licensees to invest the capital required to provide innovative new services;
- (3) promote the public interest by providing economic opportunity for a wide variety of applicants, including small business, rural telephone companies and businesses owned by members of minority groups and women; and
- (4) promote fairness to all applicants by ensuring that the process is open to all qualified participants, that it is understandable and does not disadvantage some parties relative to others.

By focusing on these general principles, the Commission can be assured that the specific auction procedures it adopts will maximize the revenue derived from winning bids while reducing the risk to the applicants submitting those bids.

5 (Footnote Continued From Previous Page)

address these complex issues based on imperfect knowledge. As a result, the Commission should recognize that its rules are likely to change as the Commission gains practical experience with the use of auctions. We encourage the Commission to continue to monitor the issues raised in this proceeding and to modify its rules as may be warranted in light of the experience gained by the auctions.

B. The Commission's Principles For Determining Whether A License Should Be Auctioned Are, With Some Exceptions, Generally Sound

In implementing the Budget Act, the Commission is required to determine the "auctionability" of a service or class of service. NYNEX agrees with the Commission that it should use the services as currently defined by the Commission to determine which services should be subject to, or excluded from, the competitive bidding requirements of the Budget Act.⁶ Neither the statute nor Conference Report contain any language that would suggest that the implementation of the statute requires the Commission to adopt new classifications of service.

The plain language of the statute supports the Commission's conclusion that the competitive bidding requirements apply only to mutually exclusive applications for an initial license or construction permit.⁷ Similarly, the Commission correctly concludes that Section 309(j)(2) limits competitive bidding to only those services in which the "principal use" of the spectrum involves, or is reasonably likely to involve, the transmission or reception of communications signals to subscribers for which compensation is received.⁸ The Commission's proposed implementation of this section, however, requires modification.

⁶ Notice at ¶21.

⁷ Notice at ¶22.

⁸ Notice at ¶¶24-27, 30-33.

The Commission proposes to implement Section 309(j)(2) by (i) proposing to identify classes of licenses and permits to determine "principal use" rather than individual licenses; and (ii) defining "principal use" as "at least a majority of the use of a service to subscribers for compensation rather than for "private service."⁹ We are concerned that the Commission's proposal will result in disparate regulatory treatment of licensees even though they provide functionally equivalent, and competitive, services.

NYNEX appreciates the Commission's concern that an examination of individual applications to determine their principal use would place a heavy administrative burden on the Commission. As such, NYNEX would not object to the Commission creating a rebuttable presumption that individual licenses within a class of licenses are either subject to competitive bidding or shall be considered private. Interested parties should be permitted the opportunity, however, to rebut the presumption and demonstrate that the principal use of the spectrum is to provide service to subscribers for compensation.

NYNEX believes that in order to prevent applicants from taking advantage of the Commission's rules to obtain an unfair competitive advantage, any license issued by the Commission to a party as a "private" service should be conditioned upon the licensee's principal use of the spectrum for that purpose. In the event that the Commission subsequently determines that the licensee is using the spectrum

⁹ Notice at ¶¶31-32.

principally to provide a commercial mobile service, the license would be subject to forfeiture or the payment of an auction fee equal to the average amount paid for a comparable spectrum block within the market area served by the licensee.

The Commission's proposal to define "principal use" as "at least a majority of the use of a Commission regulated service or class of service" does not, in our view, properly give effect to the Budget Act's objective of promoting regulatory parity. In its traditional sense, "majority" means more than half of a given number or group.¹⁰ In contrast, "principal" is defined as first in rank, character or importance. The use of the term "principal" clearly indicates that Congress was not focusing on the "quantity" of the service provided but rather its overall significance to the business of the licensee.

The Commission's proposal could result in a competitive imbalance between licensees. A commercial mobile service provider would be subject to the Commission's auction procedures and would be required to recover the cost of obtaining the spectrum in the rates charged subscribers. Another provider could undertake to acquire spectrum in a license classified as "private" by the Commission and devote 49.99% of the use of that spectrum to services offered to paying subscribers (in competition with the commercial mobile

¹⁰ The Notice does not indicate the criteria that the Commission would employ (e.g., minutes of use, channel allocations, etc.) to determine the majority use of the spectrum.

service provider). The "private" licensee would have a significant competitive advantage over its rival commercial mobile service provider inasmuch as the rates it charges need not recover auction costs.

To avoid such anticompetitive results, NYNEX believes that the Commission's definition of "principal use" should recognize that a service that might otherwise be considered "private", based on "majority use" of the spectrum, shall nevertheless be subject to the auction procedures if revenues of more than \$100,000 are received as compensation from subscribers.

NYNEX generally agrees with the Commission that, pursuant to the statutory criteria, competitive bidding should be used to allocate spectrum for PCS, Specialized Mobile Radio (SMR), Interactive Video Data Service (IVDS) and for certain cellular radio service applications. We do not believe, however, that Section 309(j) of the Act requires the Commission to allocate spectrum for cellular unserved areas for which lottery applications have already been filed with the Commission. Section 332(e) specifically excludes applications accepted for filing before July 26, 1993, and these applications should clearly be excluded from the auction process. In addition, the Commission should except those applications for cellular unserved areas accepted by the Commission after the July 26, 1993 date, but before the release of this Notice. Applicants for cellular unserved areas extended substantial resources to prepare their applications in reliance on the Commission's existing procedures. The

Commission, in another context, has recognized that equity requires that licenses for these areas be allocated under the licensing mechanism in effect at the time of filing.¹¹ The application of the competitive bidding rules to these applicants would not only be unfair, but would likely further delay the introduction of cellular services to the public.

NYNEX is not as certain as the Commission that Section 309(j)(2)(A) requires that spectrum used as an intermediate link in the provision of a continuous, end-to-end service to a subscriber should be subject to competitive bidding.¹² The findings embodied in the House Report suggest that Section 309(j)(2)(A) requires competitive bidding only for that spectrum directly used to provide mobile services to the public.

The Commission should also consider the complexities and possible adverse public interest effects caused by subjecting licensees to competitive bidding requirements for both "basic" and "intermediate link" spectrum requirements. To the extent that licenses for the spectrum are auctioned at different times, a licensee would be faced with the possibility of winning a spectrum auction for PCS spectrum but losing an auction for necessary intermediate transmission facilities. This possibility may cause applicants to bid more for this spectrum than its true economic value and could provide incentives for speculators to file mutually exclusive

¹¹ See also, Review of the Pioneer's Preference Rules, ET Docket No. 93-266, Notice of Proposed Rulemaking, released October 21, 1993.

¹² Notice at ¶29.

applications for these facilities simply to extract settlement payments from the bona fide applicant.

III. THE FCC SHOULD ADOPT ELECTRONIC, SIMULTANEOUS ENGLISH AUCTIONS AS THE PREFERRED AUCTION MECHANISM

Section 309(j) of the Budget Act requires, *inter alia*, that the Commission adopt a competitive bidding system that will: encourage the rapid deployment of new technologies; promote economic opportunity and competition; recover a portion of the value of the spectrum while avoiding unjust enrichment; and promote efficient and intense use of the spectrum. NYNEX believes that an open English auction, electronically conducted for all blocks simultaneously, with bidders permitted to submit combinatorial bids, best achieves the objectives set forth in Section 309(j).¹³

NYNEX's proposal consists of three components. First, the auctions for all of the licenses within a given block should be run simultaneously. Indeed, the Commission should consider the simultaneous auction of all available PCS spectrum blocks. Because large scale electronic auctions already exist in the financial community, the methodology should be readily adaptable to spectrum auctions within the time frame contemplated by the Budget Act.

Second, all licenses should be awarded through the use of an English auction. This process would require a bidding

¹³ As Professors Harris and Katz demonstrate, the NYNEX proposal also satisfies a number of fundamental principles of public policy that should be considered in any auction design.

party to make ascending bids in an open, albeit in electronic form, outcry process. NYNEX recommends that the bidding on any individual license be closed when forty-eight hours pass without the submission of a new bid.

Third, in order to achieve efficiencies through the aggregation of licenses, bidders should be able to submit combinatorial bids for sets of well-defined combinations of licenses in simultaneous, oral auctions. The Commission would establish the blocks available for combinatorial bidding. Licenses would be awarded to the combinatorial bidder only if the bid for the licenses as a group exceeded the sum of the highest bids for the licenses individually. There would be no second round bids. In the event that the Commission elects to use sealed bids for the combinatorial bidding, parties desiring to submit combinatorial bids would do so by submitting sealed bids prior to the commencement of the electronic open bidding. Parties submitting sealed combinatorial bids need not specify their bid in dollars and cents. These parties, if they so desire, should be permitted to specify that their bid shall be equal to the sum of all individual bids plus a stated percent, subject to limitations placed by bidders on their expenditures. These sealed bids would not be opened and announced until after completion of the electronic bidding for the individual licenses within the block. As with oral bidding, licenses would be awarded to the combinatorial bidder only if the bid for the license as a group exceeded the sum of the winning individual bids.

In its Second Report and Order in Docket No. 90-314,¹⁴ the Commission adopted certain eligibility requirements and limitations for cellular licensees and local exchange carriers. Those requirements should not be interpreted to preclude cellular carriers or local exchange carriers from submitting regional or nationwide combinatorial bids under the procedures adopted in this proceeding. Those bids should be accepted with the understanding that should the cellular carrier or local exchange carrier be successful in its combinatorial bid, the award of PCS licenses would be conditioned on either the sale of those cellular or PCS properties that create an ineligibility issue.

The NYNEX proposal is superior to the auction method tentatively recommended by the Commission. An electronic process modelled to resemble the "big board" financial trading markets is more likely to recover the value of the spectrum while, at the same time, encouraging bidders who truly value the spectrum to participate, rather than speculators. An electronic bidding process discloses the value estimations of bidders and allows its participants to reassess their individual valuations based on the information gleaned from others' bids. By increasing the amount of information available to bidders, this process reduces the amount of risk and uncertainty faced by bidders. Indeed, in a forum where few benchmarks exist for determining the value of a license and no

¹⁴ Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, released October 22, 1993.

party is any more experienced or knowledgeable than any other, an open auction is likely to generate information that will aid the determination of the "correct" value of the license.¹⁵

In sum, the process we propose is likely to result in those parties who place the highest value on spectrum being the winning bidders and, thus, reduces the possibility that the auction would fail to obtain the full value of the spectrum.

IV. IF THE COMMISSION ADOPTS SEQUENTIAL ORAL BIDDING, IT MUST ALSO ADOPT A PROCESS THAT MINIMIZES THE RISK TO BIDDERS

The Notice sets forth the Commission's tentative preference for sequential oral bidding and seeks comment on the "sequence of bidding that is most likely to facilitate economically efficient aggregation of the carriers across geographic regions and spectrum blocks."¹⁶ The sequence of auctions is a critical issue. Indeed, in light of the uncertainties generally associated with auctions, early rounds of auctions are likely to involve a greater degree of risk than later rounds. Thus, the order in which auctions are conducted will significantly impact the results. As set forth in Section III, Supra, NYNEX does not believe that the use of sequential bidding will best achieve the objectives of the Act. However,

¹⁵ There is much more information available to bidders under NYNEX's proposal as compared to the Commission's proposal to use sequential auctions. As Professors Harris and Katz observe, sequential auctions result in the bidders being relatively poorly informed in the early rounds. As a result, sequential bids can result in winning bids that do not reflect the true value of the spectrum and could adversely affect subsequent bidding strategies.

¹⁶ Notice at ¶52.

to the extent that the Commission adopts the use of this method, it should adopt a sequence process that minimizes the risks to bidders.

The Commission may minimize the risk to bidders in one of two ways. In the first approach, the Commission could sequence the auction so that it allocates all of the frequency blocks in one market area (e.g., all blocks within the New York MTA), then all of the frequency blocks in a second area, until the frequency blocks in all markets have been allocated. In the second approach, the Commission would auction all of the markets for a particular block (e.g., all markets in one of the 30 MHz blocks), then all of the markets for a second block until all markets had been auctioned. NYNEX recommends adoption of the second approach. In this regard, the observations of Professors Harris and Katz are particularly relevant:

In light of the relative information-generating characteristics of the two orderings, we prefer the second one. Under this approach, bidders for later blocks would have considerable information about the valuations implicit in prior blocks when determining their bids. Using a block-first, market-second ordering would also facilitate combination bids across markets, which we believe will be the more important form of combination.

If the Commission chooses to adopt the first ordering and run the auctions for all of the blocks within a given area before proceeding to the next area, the order in which spectrum in different geographic areas is auctioned off can matter for both efficiency and fairness. For example, suppose that the Commission chose to auction spectrum for the New York City area first due to its population size, with other areas following.

As auctions progress, participants will learn more about what is going on. Hence, participation in early rounds may be riskier. But a firm like NYNEX might have no choice but to bid in its home region. Therefore, if the Commission does adopt sequential auctions for different geographic areas, it should proceed in random order across trading areas within each block.

V. THE AUCTION RULES ADOPTED BY THE COMMISSION SHOULD PROMOTE DIVERSITY WHILE PROVIDING ALL ELIGIBLE PARTICIPANTS AN EQUITABLE OPPORTUNITY TO PARTICIPATE IN THE BIDDING PROCESS

Section 309(j)(4)(D) requires the Commission to adopt competitive bidding rules that afford small businesses, rural telcos and businesses owned by minorities and women the opportunity to participate in the provision of spectrum-based services. Several options exist that would ensure that entities Congress has chosen for special treatment have an opportunity to participate in spectrum auctions and, in turn, to provide services using competitively awarded spectrum licenses. NYNEX believes that, within specified bands of spectrum (e.g., one of the 20 MHz bands or two of the 10MHz bands), designated groups should be entitled to receive special financial arrangements, alternate payment methods, and discounts should they win the auction. The telecommunications industry, because of its technological nature and constant evolution, involves capital intensive businesses. It is the inability, on the part of the designated entities described in

the legislation, to make the necessary investment commitments that hinders their full participation in the marketplace.¹⁷

We are concerned, however, with the Commission's proposed set-aside of spectrum for designated entities. The reservation of blocks for preferred groups could disrupt the market-based allocation of spectrum and could artificially lower the value of the spectrum. In the worst case, reserving spectrum for designated entities could cause the spectrum to remain unused and could conflict with the statutory objective that spectrum be allocated efficiently in order to bring services to consumers in an expeditious manner.

Apart from financial arrangements offered to designated groups, the FCC might wish to encourage successful bidders to affiliate with other companies to construct facilities or offer services provided using auctioned spectrum.¹⁸ It serves the public interest for the Commission

¹⁷ See Office of the Small Business Administration, Report released September 23, 1993 (which confirms that capital formation is one of the major economic barriers to full participation by small and minority owned businesses). It is evident that, although discrimination in the marketplace may exist, the largest barrier to participation in the auction process is price. Therefore, any preference designed by the Commission should focus, as we suggest, on offering financial opportunities for designated entities. NYNEX would also support a proposal that would lower the price of the spectrum for preferred groups in line with the Commission's recommendation for awarding Pioneer's Preference licenses on a reduced-price basis. In fact, similar standards exist today to stimulate participation by preferred groups in the defense industry and are exhibited in the Buy America Act.

¹⁸ See Letter from Rep. Dingell, Chairman, U. S. House of Representatives, Committee on Energy and Commerce, to Hon. James M. Quello, Acting Chairman, Federal Communications Commission, dated September 21, 1993.

to evaluate the potential of the marketplace and create a scheme that promotes the rapid deployment of new technologies and creates secondary businesses and jobs for the public at large. However, we caution the Commission that while alliances may promise significant benefits to designated entities, such arrangements could encourage "sham" operations designed to take advantage of alternate financial arrangements offered for which designated groups are eligible. Accordingly, the Commission should closely monitor alliances that include designated entities in order to ensure that such entities own a controlling portion of the business and actually are responsible for the management of that business.

VI. THE COMMISSION SHOULD NOT RESTRICT TRANSFERS AND ASSIGNMENTS OF SPECTRUM INITIALLY ALLOCATED BY AUCTION

In the event that spectrum is awarded by an auction process characterized by wide and vigorous participation, we agree with the Commission that no restrictions, or penalties, on resale would be appropriate. Indeed, the ability to transfer licenses is consistent with the view that the marketplace (e.g., the introduction of new technologies or other market conditions) should dictate the value of the spectrum.¹⁹

NYNEX shares the Commission's concern that there may be instances in which transfers of licenses could result in

¹⁹ If the winning bidder pays the market price for its license, it will not be unjustly enriched through its resale.

sellers reaping windfall profits. The underlying purpose behind acquisitions of licenses should be to provide service to the public over the full term of the license. To provide licenses a disincentive to engage in the trafficking of licenses, NYNEX recommends that the Commission place limitations on the sale price for systems. The nature of the limitation would be a function of the length of operation of the system. For example, systems which are sold prior to construction could not be sold for more than the auction price plus out-of-pocket pre-construction expenditures. The permissible sale price would increase with the increased commitment of service by the licensee to the market so that no limitations on the sale price would exist by the fifth year of operation (assuming that the licensee was in compliance with build-out requirements).

VII. THE COMMISSION MUST CLEARLY ENUNCIATE A PUBLIC POLICY RATIONALE IN SUPPORT OF ALLIANCES FORMED BY BIDDERS

The Commission seeks comment on rules that would prohibit collusive conduct by bidders while, at the same time, avoid discouraging the formation of bidding consortia.²⁰ NYNEX believes that the rapid development and introduction of new PCS services will require the formation of strategic alliances. Indeed, according to press reports, discussions of possible alliances are most likely taking place today between firms of various size and market power. NYNEX believes that

²⁰ Notice at ¶93.